

(e.g., city office building, police station, school) which discharge solely domestic wastes.

(5) The grantee must be prepared to demonstrate for the Regional Administrator's approval that its system of evaluating the volume, strength, and characteristics of the discharges from users or categories of users classified within the subclass of small nonresidential users is sufficient to assure that such users or the average users in such categories do not discharge either toxic pollutants or more than the equivalent of 25,000 gallons per day of domestic wastewater.

(6) The ad valorem user charge system shall distribute the operation and maintenance costs for all treatment works in the grantee's jurisdiction to the residential and small nonresidential user class, in proportion to the use of the treatment works by this class. The proportional allocation of costs for this user class shall take into account the total waste water loading of the treatment works, the constituent elements of the wastes from this user class and other appropriate factors. The grantee may assess one ad valorem tax rate to this entire class of users or, if permitted under State law, the grantee may assess different ad valorem tax rates for the subclass of residential users and the subclass of small nonresidential users provided the operation and maintenance costs are distributed proportionately between these subclasses.

(7) Each member of the industrial and commercial user class described under paragraph (b)(4)(ii) of this section and of the user class which pays no ad valorem taxes or receives substantial credits in paying such taxes described under paragraph (b)(4)(iii) of this section shall pay its share of the costs of operation and maintenance of the treatment works based upon charges for actual use (in accordance with § 35.929-1(a)). The grantee may use its ad valorem tax system to collect, in whole or in part, those charges from members of the industrial and large commercial class where the following conditions are met:

(i) A portion or all of the ad valorem tax rate assessed to members of this class has been specifically designated

to pay the costs of operation and maintenance of the treatment works, and that designated rate is uniformly applied to all members of this class:

(ii) A system of surcharges and rebates is employed to adjust the revenues from the ad valorem taxes collected from each user of this class in accordance with the rate designated under paragraph (b)(7)(i) of this section, such that each member of the class pays a total charge for its share of the costs of operation and maintenance based upon actual use.

§ 35.929-2 General requirements for all user charge systems.

User charge systems based on actual use under § 35.929-1(a) or ad valorem taxes under § 35.929-1(b) shall also meet the following requirements:

(a) *Initial basis for operation and maintenance charges.* For the first year of operation, operation and maintenance charges shall be based upon past experience for existing treatment works or some other method that can be demonstrated to be appropriate to the level and type of services provided.

(b) *Biennial review of operation and maintenance charges.* The grantee shall review not less often than every 2 years the waste water contribution of users and user classes, the total costs of operation and maintenance of the treatment works, and its approved user charge system. The grantee shall revise the charges for users or user classes to accomplish the following:

(1) Maintain the proportionate distribution of operation and maintenance costs among users and user classes as required herein;

(2) Generate sufficient revenue to pay the total operation and maintenance costs necessary to the proper operation and maintenance (including replacement) of the treatment works; and

(3) Apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly.

(c) *Toxic pollutants.* The user charge system shall provide that each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of

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the grantee's treatment works shall pay for such increased costs.

(d) *Charges for operation and maintenance for extraneous flows.* The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users of the grantee's treatment works system based upon either of the following:

(1) In the same manner that it distributes the costs of operation and maintenance among users (or user classes) for their actual use, or

(2) Under a system which uses one of any combination of the following factors on a reasonable basis:

- (i) Flow volume of the users;
- (ii) Land area of the users;
- (iii) Number of hookups or discharges to the users;
- (iv) Property valuation of the users, if the grantee has a user charge system based on ad valorem taxes approved under § 35.929-1(b).

(e) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project is a regional treatment system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user charge systems in accordance with section 204(b)(1)(A) of the Act and §§ 35.929 through 35.929-3. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works. The public shall be informed of the financial impact of the user charge system on them and shall be consulted prior to adoption of the system, in accordance with 40 CFR part 25.

(f) *Notification.* Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges or ad valorem taxes which are attributable to waste water treatment services.

(g) *Inconsistent agreements.* The grantee may have preexisting agreements which address: (1) The reservation of capacity in the grantee's treatment

works, or (2) the charges to be collected by the grantee in providing wastewater treatment services or reserving capacity. The user charge system shall take precedence over any terms or conditions of agreements or contracts between the grantee and users (including industrial users, special districts, other municipalities, or Federal agencies or installations) which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and these regulations.

(h) *Costs of pretreatment program.* A user charge system submitted by a municipality with an approved pretreatment program shall provide that the costs necessary to carry out the program and to comply with any applicable requirements of section 405 of the Act and related regulations are included within the costs of operation and maintenance of the system and paid through user charges, or are paid in whole or in part by other identified sources of funds.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 10304, Feb. 16, 1979]

§ 35.929-3 Implementation of the user charge system.

(a) When a grantee's user charge system is approved, implementation of the approved system shall become a condition of the grant.

(b) The grantee shall maintain such records as are necessary to document compliance with these regulations.

(c) Appendix B to this subpart contains guidelines with illustrative examples of acceptable user charge systems.

(d) The Regional Administrator may review, no more often than annually, a grantee's user charge system to assure that it continues to meet the requirements of §§ 35.929-1 through 35.929-3.

§ 35.930 Award of grant assistance.

The Regional Administrator's approval of an application or amendments to it through execution of a grant agreement (including a grant amendment), in accordance with § 30.345 of this subchapter, shall constitute a contractual obligation of the United States for the payment of the Federal share of the allowable project costs, as determined by the Regional